

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 07-125
Washington, D.C. 20554

In the Matter)	EB Docket No. 07-147
)	
PENDELTON C. WAUGH, CHARLES M.)	File No. EB-06-IH-2112
AUSTIN, and JAY R. BISHOP)	
)	
PREFERRED COMMUNICATION)	
SYSTEMS, INC.)	NAL/Acct. No. 200732080025
)	
Licensee of Various Site-by-Site)	
Licenses in the Specialized Mobile)	FRN No. 0003769049
Radio Service)	
)	
PREFERRED ACQUISITIONS, INC.)	
)	FRN No. 0003786183
)	
License of Various Economic Area)	
Licenses In the 800 MHz Specialized)	
Mobile Radio Services)	
)	
)	

To: The Commission

**PETITIONER'S OPPOSITION TO ENFORCEMENT BUREAU'S MOTION
TO STRIKE AND MOTION TO STRIKE ENFORCEMENT BUREAU'S
OPPOSITION.**

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Toshiaki Saito

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TOSHIAKI SAITO ("Petitioner"), by and through his attorneys, Ashford & Wriston a Limited Liability Law Partnership LLP, submits this Opposition to the Enforcement Bureau's ("Bureau") February 29, 2012, Motion To Strike ("Motion To Strike"). The Motion To Strike claims that Petitioner's Reply to the Enforcement Bureau's Opposition ("Reply") is unauthorized because it allegedly "does not relate to any of the categories of filings identified in Section 1.294(c)."¹ The Petition explicitly requested, however, that it "be accepted as a Motion To Deny² under Rules . . . 1.939 [and] 1.2108," based on misrepresentations Preferred Communications Systems, Inc. and Preferred Acquisitions, Inc. (collectively, "Preferred") made in its license applications regarding company ownership (and/or "interests" in company ownership).³ The Petition is therefore at the very least related to subsection 1.294(c)(3), the

¹ *Enforcement Bureau's Motion to Strike*, 1:2.

² In this case, such a petition to deny might also be referred to as a "petition to revoke" due to the fact that the applicant has obtained by its fraud on the Commission actual possession of the licenses.

³ *Petitioner's Reply To Enforcement Bureau's Opposition To Petition to Intervene And Revoke Licenses* ("Petition"), n.2. Because the Enforcement Bureau's Opposition To Intervene And Revoke Licenses ("Opposition"), n.12, misinterpreted the request as a "kitchen sink" approach made up of nonrelated sections, each cited separately to potentially gain party status, Petitioner accordingly clarified the relief in his Reply, n.3.

Reply was indeed authorized,⁴ and the Motion to Strike should be summarily dismissed.

I. Section 1.294(c) Applies Because The Petition Requested The Denial Of Preferred License Applications.

Petitioner's request for dismissal of Preferred's applications, as noted in the Petition, is based on the misrepresentations of company ownership Preferred made in its FCC Form 175, FCC Form 602, and then repeated in its FCC Form 601, dated September 27, 2000.⁵ Since no parties other than Preferred's officers and employees were apparently aware of these misrepresentations until years later, after the deadline for submitting a request for dismissal had passed, the Petition requested that the Commission waive (pursuant to Section 1.3) Section 1.2108's timeframe for submitting a petition to deny.⁶

If, despite the Petition's request to dismiss Preferred's applications, the Commission finds that the Petition is not related to 1.294(c), Petitioner respectfully requests that, pursuant to Section 1.3, the Commission waive Section 1.294(b)'s restriction on replies and consider Petitioner's Reply. This Reply was not an attempt to advance new arguments, as the Motion to Strike claims, but rather was limited to addressing issues raised by the Opposition, and for the purpose of

⁴ Section 1.2108(c) states that "An applicant may file an opposition to any petition to deny, **and the petitioner a reply to such opposition.**" (Emphasis added.)

⁵ Petition, 8-9.

⁶ Petition, n.2; repeated in Reply, n.12.

responding to the Opposition's misapplication of Commission rules and unfair caricature of the Petition as limited to "Waugh violations."

The Commission should undoubtedly have the opportunity to consider the Reply and its responses to the issues raised by the Bureau's Opposition, as the Bureau should not be allowed to, without challenge, sweep issues of significant public interest "under the rug" through a settlement that leaves licenses in the hands of those that have lacked candor and made misrepresentations before the Commission. The settlement also lacks the transparency the public deserves and this lack of transparency is evident from the settlement's implication that any Preferred wrongdoing lies at the feet of deceased Waugh while denying any Preferred wrongdoing, yet ostensibly requiring a \$100,000 "voluntary contribution" and "a compliance plan aimed at deterring any potential violations of the nature designated for hearing in this case."⁷ This settlement is unquestionably not in the public interest and the Reply's responses to the Opposition respecting the settlement should be available for Commission review.

II. The Bureau's Opposition Is Only Authorized If The Petition
 Were Filed Pursuant To Section 1.294(c).

The Bureau's Opposition, furthermore, would apparently have been late if the Petition were filed under Section 1.294(b) rather than Section 1.294(c). Had Mr. Saito filed his Petition pursuant to 1.294(b), the Bureau would have had 5 calendar days under 1.294(b) to file its

⁷ Opposition, 5:9.

Opposition. Since this “is less than 7 days, intermediate holidays [were] not [] counted in determining the filing date.”⁸ Additionally, since apparently the Opposition was “required to be served upon other parties” and “[was] is in fact served by mail” and “the filing period for a response [was] 10 days or less,” the Bureau was allowed an additional 3 days for filing a response (excluding intermediate holidays).⁹ Since the Bureau allegedly received the Petition on February 2, 2012, the filing date, after all computations of time, was February 13, 2012.

The Bureau’s Opposition, however, is postmarked on February 14, 2012, one day after the filing date required by Section 1.294(b).¹⁰ Service by mail, not service by email, is controlling in the present situation because Petitioner was not party to the prior agreement to accept service by email and at no point has agreed to accept such service, nor has the Bureau or any other party requested that Petitioner do so.¹¹ Had the Bureau mailed the Opposition to Mr. Saito on February 13th as its Certificate of Service indicated, it might have been timely. Since the Opposition was postmarked on February 14, 2012, the Opposition is

⁸ Section 1.4(g).

⁹ Section 1.4(h).

¹⁰ See Exhibit A.

¹¹ *Transcript of Prehearing Conference*, September 12, 2007, 27:19-22 (“I was curious as to whether the other people **here today** would accept service by email”)(emphasis added).

apparently late for a response to a petition filed under Section 1.294(b), (but admittedly timely for a response to a petition filed under 1.294(c)).¹²

While Petitioner readily acknowledges the Commission's discretion to accept late filings (and is indeed petitioning the Commission to do exactly that by allowing its petition to deny applications under Sections 1.939), the Bureau should not be permitted "have its cake and eat it too" by benefiting from 1.294(c)'s longer filing period yet bar Petitioner's Reply under Section 1.294(b).

Petitioner therefore respectfully requests that if the Commission disallows his Reply for allegedly not relating to one of Section 1.294(c)'s enumerated categories, that it also strike the Bureau's Opposition from the record as untimely under Section 1.294(b). Alternatively, if the Commission exercises its power to waive the rules and deems the Opposition to be timely, Petitioner requests that his Reply also be permitted.

DATED: Honolulu, Hawaii, March 6, 2012.



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¹² If the Bureau believes that the filing of its Opposition with the Commission on February 13th is controlling in this case, regardless of the fact that the copy of the Opposition was not sent to Mr. Saito by mail until February 14, Petitioner urges the Commission to consider that his Petition was filed through ECFS on January 29, 2012, which would still render the Opposition untimely pursuant Section 1.294(b).

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License of Various Economic Area)	
Licenses in the 800 MHz Specialized)	
Mobile Radio Services)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing shall be duly served upon the following persons by mailing said copy, postage prepaid, first class mail, in a United States post office at Honolulu, Hawaii, on March 6, 2012, at their address of record:

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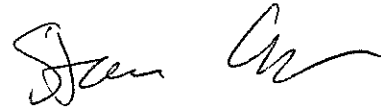
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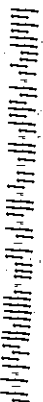
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Exhibit A